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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/679,566	10/06/2003	Beth A. Lange	KCC 4967 (K-C 19, 318)	3112
321 7590 01/23/2007 SENNIGER POWERS ONE METROPOLITAN SQUARE 16TH FLOOR ST LOUIS, MO 63102			EXAMINER MERCIER, MELISSA S	
			ART UNIT	PAPER NUMBER
			1615	
SHORTENED STATUTORY PERIOD OF RESPONSE		NOTIFICATION DATE	DELIVERY MODE	
3 MONTHS		01/23/2007	ELECTRONIC	

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Notice of this Office communication was sent electronically on the above-indicated "Notification Date" and has a shortened statutory period for reply of 3 MONTHS from 01/23/2007.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary

Application No.

10/679,566

Applicant(s)

LANGE, BETH A.

Examiner

Melissa S. Mercier

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 November 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-40 is/are pending in the application.
- 4a) Of the above claim(s) 10,32 and 39 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9, 11-31, 33-38, 40 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Receipt of Applicants Remarks filed on November 9, 2006 is acknowledged.

Claims 1-40 are pending in this application, claims 10, 32, and 39 have been previously withdrawn from consideration for reading on non elected species. Claims 1-9, 11-31, 33-38, and 40 are rejected.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 9 and 20 are rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for protecting, does not reasonably provide enablement for preventing damage. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make/use the invention commensurate in scope with these claims. Applicant has not provided a means of determining enablement for preventing any and all damage, which may occur to the skin.

Applicant is advised that should claims 1-9, and 11 be found allowable, claims 12-31 and 33-40 will be objected to under 37 CFR 1.75 as being a substantial duplicates thereof. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in

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wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

Response to Arguments

Applicant's arguments filed November 9, 2006 have been fully considered but they are not persuasive. Applicants have argued the submitted specification enables more than just wet wipes for protecting against skin damage and cites examples including antimicrobials, sunscreens, skin protectants, and rash relievers (page 3). It is the examiners position that the specification is enabled for protecting damage to the skin; however, applicants have not provided a means of ascertaining how one would prevent skin damage in all cases.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-9, 11, 12-31, and 32-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bogart et al. (US Patent 4,786,367) in view of Wilkman (US PGPub 2003/0106812), Hagopian (US Patent 6,581,775), Hammond et al. (US Patent 6,986,886) and Tomarchio et al. (EP 1 266 600 A1).

Bogart teaches "soft, absorbent, and bulky cellulosic fibrous webs which have been treated so that they impart a soothing or emollient effect to the human skin when used for wiping or drying" (column 1, lines 8-13).

Bogart does not teach multiple wipes imparting multiple benefits to the skin. Bogart also does not teach the wipes/containers being marked to alert the user as to which wipe to use and when with number, letter, or color-codes.

Additionally, Bogart does not teach the specific benefits of cleaning, maintenance, and protecting and preventing damage benefit for their wipes.

Wilkman teaches "impregnated wipes have typically been sold as a single formulary item such as a hand cleaner, a baby wipe, a suntan lotion or an insect repellant. One embodiment of Wilkman's invention specifies, the impregnated wipes are packaged as kits or collections of various related types of wipes. The collections could be according to any number of criteria. For instance a cosmetic package may consist of skin care items such as moisturizers, sun blocks, vitamin-enhanced formulas, eye make-up remover, and hand-cleaning or sanitation wipes" (paragraph 0073).

Regarding claims 7-9, 18-20 Wilkman further teaches, "a package having multiple wipes provides more than one surface to wipe with. For example, if the user wants to remove a substance from a surface, the user uses the first and outer wipe first,

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and when the wipe is used up, the user peels off the wipe and uses the second and inner wipe. Similarly, if the user wants to apply a substance to a surface, the user uses the wipes successively. It is contemplated that the wipes may be impregnated with the same or different formularies. For example, the wipe may be impregnated with a cleaning substance to clean the surface prior to applying a treatment substance with the wipe" (paragraph 0133).

Hagopian teaches a method of external genital cleansing and prophylactic kit. "The kit includes wipes having topical microbicide, personal lubricants, sterile water or sterile water-bases solutions disposed on or impregnated in" (abstract).

"Hagopian's Claim 1 is drawn to a kit comprising:

- a. a sealed enclosure
- b. at least one condom
- c. at least one first cleansing wipe container
- d. at least one first cleansing wipe containing enclosing at least one first

cleansing wipe

e. at least one first cleansing wipe containing a first wipe solution comprised of a personal lubricant, nonirritating to mucosal tissues

f. at least one second cleansing wipe container

g. at least one second cleansing wipe containing a second wipe solution comprised of nonoxynol-9 and glycerol" (column 6, lines 24-50).

Additionally, Hagopian teaches, "the genital region may be cleansed with a first wipe or second wipe or both in succession" (column 3, lines 5-20).

Regarding Claims 5-6, 16-17, and 37-38, Hagopian's kit as claimed can further include additional wipe containers and wipes" (column 6, lines 24-50).

Hammond teaches a hair care composition kit used for dyeing the hair, which comprises "instructions to apply the color composition to the hair and to leave the coloring composition on the hair and then rinse the coloring composition from the hair and to apply the hair conditioning composition to the hair in a separate step" (column 22, lines 28-33).

Tomarchio teaches a printed wet wipe with an image printed on them, which identifies the composition of the wet wipe.

Regarding Claims 2-4, 13-15, 22-24, 26-27, 29-31, and 34-36, Tomarchio defines image to include "any type of design, mark, figure, picture, identification code, words, patterns, or instructions" (paragraph 0009).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Bogart, Hagopian, Wilkman, Hammond, and Tomarchio in order to obtain a system comprising numerous products into one kit. "By grouping the wipes in such configurations, the need to carry containers of various lotions and other products during an outing is eliminated" (Wilkman, paragraph 0073).

An artisan of ordinary skill in the art would have a reasonable expectation of success that the multi-care skin care system would succeed, specifically based on the teaching of Wilkman, who describes numerous embodiments of just such kits.

Response to Arguments

Applicant's arguments filed November 9, 2006 have been fully considered but they are not persuasive. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). Applicant argues that none of the combined references disclose, teach or suggest all of the claim limitations, in particular, according to the applicant, none of the cited references teach or suggest a pre-packaged multi-step skin care system comprising a first wet wipe, a second wet wipe, and a third wet wipe, for imparting a first benefit, a second benefit, and a third benefit, respectively, to the skin, wherein the wet wipes comprise markings to alert a user as to the order of use of the wipes. Additionally, Applicant argues, the only disclosure in any of the references of markings on a wipe is in Tomarchio. Tomarchio discloses wet wipes that may have printed thereon some type of image, such as a design, mark, figure, picture, identification code, word, pattern, or instruction.

It is the examiners position that the markings disclosed for use would be sufficient to label the wet wipes according to the instant claims. Further in view of the Hagopian disclosure, which teaches multiple steps, it is the examiners position that it would have been obvious to one of ordinary skill in the art at the time the invention, was made to have labeled the wet wipes according to their intended function and use.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melissa S. Mercier whose telephone number is (571) 272-9039. The examiner can normally be reached on 7:30am-4pm Mon through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Woodward can be reached on (571) 272-8373. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



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